* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA Nos. 65 & 37 of 2006**

% Judgment reserved on: 28th February, 2007

Judgment delivered on: 15th March, 2007

COMMISSIONER OF INCOME TAX
Delhi-II, New Delhi .... Appellant
Through: Ms.Prem Lata Bansal with
Mr.Vishnu Sharma, Adv.

Vs.

M/S MALIBU ESTATE
38,DDA Commercial Complex,
Kailash Colony Extension,
New Delhi ..... Respondent
Through:Mr.Saubhagaya Aggarwal, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

V.B. GUPTA, J.

By this common judgment two appeals being ITA Nos. 65/2006 & 37/2006 filed by the Revenue are being disposed

of since common question of law is involved.

2. Both these appeals arise out of decision dated 20th May, 2005 passed by Income Tax Appellate Tribunal (hereinafter referred as Tribunal) for the assessment year 1997-98 in ITA No.1499/Del/2001 and for the assessment year 1999-2000 in ITA No.1500/Del/2001.

3. The Revenue has raised following questions of law in ITA No.37/2006.

> (a)Whether ITAT was correct in law in holding that the income from the project known as "Malibu Town" is assessable in the hands of Malibu Estate (joint venture) as an AOP on substantive basis and not in the hands of Malibu Estate Pvt. Ltd.?
>
> (b)Whether ITAT was correct in law in directing to give credit of TDS to the Assessee though the certificates were issued in the name of Malibu Estate Pvt.Ltd. and the income from the project was assessable in the hands of Malibu Estate Pvt. Ltd.?"

4. Vide order dated 2nd August, 2006, this Court held that insofar as question (a) is concerned, it is not a substantial question of law and in this regard reliance was placed on a decision rendered on 2nd August, 2006 by this Court in ITA No.301/2004.

5. Regarding question (b), it was listed for hearing.

6. The brief facts of both these cases are that five companies were incorporated on 28th April, 1992 known as Malibu Group of Companies. These companies wanted to develop a township in Gurgaon. However, as per Haryana Urban Area Act the area for which license can be granted to a developer or builder is 100 acres and under the Land Ceiling Act in Haryana, the maximum permissible individual holding is 28 acres. Therefore, these five companies entered into an agreement for pooling their lands for this purpose and to develop the same. For this purpose Malibu Estate Pvt. Ltd. (MEPL in short) was authorised to take all necessary actions for development for obtaining license from the authorities concerned etc. Two returns were filed by the group, one in the status of MEPL and the other in the name of MEJV in the status of AOP.

7. A search was conducted at the business premises of Malibu Group of Companies on 15th September, 1995. In pursuance to search, block assessment was made in the case of MEPL on 30th September, 1996. However, no proceedings under Section 158BC or 158BD of the Act

were initiated against the present Assessee, considering the joint venture to be non-est. The assessment was completed by the Assessing Officer in assessment year 1996-97 on protective basis at Rs.1,01,03,080/- after making additions. Similarly, in the present year also the Assessing Officer completed the assessment on protective basis at Rs.1,63,18,318/-.

8. Assessee filed an appeal before the Commissioner of Income Tax (Appeals) against the assessment order and the Commissioner of Income Tax (Appeal) relying on his own order in the case of MEPL held that the income of real estate development project known as Malibu Town was to be included in the total income of the Assessee on substantive basis and not on a protective basis as had been done by the Assessing Officer. He further directed the Assessing Officer to allow credit for Tax deducted at Source from interest on fixed deposits as per certificates filed.

9. Against this order, the Revenue filed an appeal before the Tribunal who relied on its earlier order in the case of same Assessee for the assessment year 1996-97 and thereby confirmed the order passed by the Commissioner

of Income Tax (Appeal).

10. Aggrieved against the impugned order passed by the Tribunal, the Revenue has filed the present appeals.

11. It has been argued by learned counsel for the Revenue that the Tribunal wrongly allowed credit for the TDS deducted from interest on fixed deposits in the case of Assessee despite the fact that the same were issued in the name of MEPL and income was assessable in the hands of MEPL.

12. The Commissioner of Income Tax (Appeals) in its order dated 31st January, 2001 held:-

> " vide appellate order of even date passed in the case of M/s Malibu Estate Pvt. Ltd. for the assessment year 1997-98 in Appeal No.79/2000-901 that the real estate project known as Malibu Towne and the income thereof belongs to the assessee M/s Malibu Estate Joint Venture, AOP. Since the fixed deposits in question pertain to the Malibu Towne project and thus belong to the assessee M/s Malibu Estate Joint Venture, AOP, and the interest on the said fixed deposits has been credited in its books, credit for the TDS deducted from the said interest should be allowed to the assessee"

13. The Assessee has claimed credit for TDS in the hands of Malibu Estate Joint Ventures though the relevant TDS

certificates were issued in the name MEPL. Since the income of the project has been held to be assessable in the hands of the Assessee i.e. Malibu Estate Joint Venture and it is a settled position that credit for TDS is to be given in the case of the Assessee and that too in the year in which the corresponding income is taxed.

14. It may be pointed out that similar relief was allowed by Commissioner of Income Tax (Appeals) in the Assessee's case for the assessment year 1996-97 and the Revenue did not prefer any appeal.

15. Under these circumstances, we have no hesitation in answering the question (b) in the affirmative, that is, in favour of the Assessee and against the Revenue.

16. As such both the appeals filed by Revenue are hereby dismissed.

(V. B. GUPTA)
JUDGE

March 15, 2007
bisht

(MADAN B. LOKUR)
JUDGE